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No. 09-

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA ex rel. Lokesh Vuyyuru,
Petitioner,

v.

GOPNATH JADHAV, M.D.; SOUTHSIDE GASTROENTEROLOGY ASSOCIATES, LIMITED; COLUMBIA/HCA JOHN RANDOLPH, INCORPORATED; PETERSBERG HOSPITAL COMPANY, LLC; CAMERON FOUNDATION, A VIRGINA NON-PROFIT CORPORATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A) Whether the United States Court of Appeals for the Fourth Circuit in the instant case of *United States of America ex rel. Lokesh Vuyyuru v. Gopinath Jadhav, M.D. et al.*, misconstrued the rules of law established by this Court regarding the test for determining when a relator's claims brought under the federal False Claims Act, 31 U.S.C. § 3730, are "based upon" a public disclosure under the Act's jurisdiction-removing provision at § 3730(e)(4), and decided an important question of federal law in a manner that conflicts with the Supreme Court's decisions in *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 470-72 127 S.Ct. 1397, 167 L.Ed.2d 190 (2007) when this Appeals Court held that the relator must prove that he was the source of the public disclosure of similar false claims allegations.

B) Whether the United States Court of Appeals for the Fourth Circuit in the instant case of *United States of America ex rel. Lokesh Vuyyuru v. Gopinath Jadhav, M.D. et al.*, in effectively holding that a relator's false claims allegations, to be "based upon" a public disclosure under the federal False Claims Act's jurisdiction-removing provision at § 3730(e)(4), need not be actually derived from the public disclosure but only be similar to such public disclosure, decided an important question of federal law that has not been, but should be, settled by this court, and decided this question in a manner that conflicts with decisions of other circuit courts.

C) Whether the United States Court of Appeals for the Fourth Circuit in the instant case of *United States of America ex rel. Lokesh Vuyyuru v. Gopinath Jadhav,*

M.D. et al. decided an important question of federal law that has not been, but should be, settled by this court regarding when a relator's false claims action generally and a relator's jurisdictional allegations specifically are "clearly frivolous" under the federal False Claims Act's provision for an award of attorneys' fees to a prevailing defendant at § 3730(d)(4).

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CITATIONS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

The decision by the United States Court of Appeals for the Fourth Circuit entered below is reported at *United States of America ex rel. Lokesh Vuyyuru v. Gopinath Jadhav, M.D.*, 555 F.3d 337 (4th Cir. 2009). (App. A)

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fourth Circuit issued its opinion affirming the District Court's decision on February 12, 2009. Rehearing was denied by Order dated April 10, 2009. (App. E)

28 U.S.C. § 1254(1) is the statutory provision which confers on this Court jurisdiction to review on a *Writ of Certiorari* the judgment and orders of the United States Court of Appeals for the Fourth Circuit in question in this case.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

§ 3730. Civil actions for false claims

(a) Responsibilities of the Attorney General. The Attorney General diligently shall investigate a violation under section 3729 [*31 USCS § 3729*]. If the Attorney General finds that a person has violated or is violating

section 3729 [*31 USCS § 3729*], the Attorney General may bring a civil action under this section against the person.

(b) Actions by private persons.

(1) A person may bring a civil action for a violation of section 3729 [*31 USCS § 3729*] for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

* * *

(d) Award to qui tam plaintiff.

* * *

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain actions barred.

* * *

> (4) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.
>
> (B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

31 U.S.C. § 3730.

STATEMENT OF THE CASE

The District court had federal question subject matter jurisdiction under 28 U.S.C. § 1331 over Petitioner's federal claims which were brought pursuant to the federal False Claims Act (FCA), 31 U.S.C. § 3730; and had subject matter jurisdiction over these claims pursuant to 31 U.S.C. § 3732.

On March 13, 2006, Relator Vuyyuru filed this *qui tam* action under the FCA, and thereafter amended

the complaint three times. Relator Vuyyuru ultimately named Gopinath Jadhav, M.D. (Dr. Jadhav), Southside Gastroenterology Associates, Ltd. (the SGA Practice), Petersburg Hospital Company, L.L.C., The Cameron Foundation, and Columbia/HCA John Randolph, Inc. as defendants (collectively Defendants). The Third Amended Complaint (TAC) alleges various claims under the False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, and Virginia state law.

Relator Vuyyuru alleged three separate counts under the FCA. In the first count, Relator Vuyyuru alleged Defendants knowingly presented, or caused to be presented and filed, a false or fraudulent claim for payment or approval with the United States Government, in violation of 31 U.S.C. § 3729(a)(1). (J.A. 139). In the second count, Relator Vuyyuru alleged Defendants knowingly made or used or caused to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government, in violation of 31 U.S.C. § 3729(a)(2). (J.A. 139). In the third count, Relator Vuyyuru alleged that Defendants conspired to defraud the United States government in violation of 31 U.S.C. § 3729(a)(3) by getting false or fraudulent claims allowed or paid to the damage of the United States' government. (J.A. 140). Relator Vuyyuru sought damages and fines together with attorneys' fees and costs. (J.A. 142).

The TAC alleges that Dr. Jadhav is a gastroenterologist, who practiced medicine in Virginia at Southside Regional Medical Center (SRMC) and John Randolph Medical Center (JRMC), through the SGA Practice. Dr. Jadhav was the president and sole

shareholder of the SGA Practice. As part of his practice, Dr. Jadhav performed medical procedures such as colonoscopies, endoscopies, esophago gastro duodonoscopies (EDG), percutaneous endoscopic gastrostomy tube placements (PEG tube placement), and biopsies.

Relator Vuyyuru asserts in the TAC that Defendants fraudulently billed the government, through the Medicare and Medicaid programs, for unnecessary or incomplete medical procedures performed by Dr. Jadhav. The TAC allegations include the following specifics: (1) Dr. Jadhav, while performing colonoscopies, routinely took an unnecessary biopsy of the Ileocecal Valve (IC Valve) when he was unable to find a polyp; (2) Dr. Jadhav unnecessarily performed an EDG on a patient and a PEG tube replacement on consecutive days, when the two procedures could have been performed on the same day for a lower rate; (3) In the first half of 2002, Dr. Jadhav performed an unnecessary colonoscopy and biopsy of the IC Valve on a sixty-five year old female; (4) In August 1997, Dr. Jadhav performed an unnecessary endoscopy on a seventy-two year-old female; (5) On November 27, 2001, Dr. Jadhav performed an unnecessary EDG with biopsy on a seventy-two year old female, and thirteen days later performed an unnecessary colonoscopy with biopsy on the same patient; and (6) On January 3, 2000, Dr. Jadhav performed an unnecessary colonoscopy on a seventy-one year old female. The TAC alleges that Dr. Jadhav performed such unnecessary procedure for the sole purpose of enhancing his income and that of SRMC and JRMC. (J.A. 133).

The TAC alleges that Dr. Jadhav frequently billed for the procedure of a colonoscopy and upper-endoscopy when Dr. Jadhav failed to complete the procedure. (J.A. 134). The TAC alleges that Defendant Dr. Jadhav for a period of nearly 10 years failed to dictate the required consult note before billing, making minor notations only in the chart, while billing for a level 3 to 5 consult, and at SRMC Dr. Jadhav routinely and in most cases did not provide a dictation for consults and failed to perform general multi-system examinations failing to follow federal agency guidelines since 1997 for which he billed or caused to be billed to the United States Government as though these guidelines were being met. (J.A. 136)

On October 6, 2006, Defendants moved to dismiss the Third Amended Complaint under Federal Rule of Civil Procedure 12(b)(1), contending that the jurisdictional bar set forth in 31 U.S.C. § 3730(e)(4) barred Relator Vuyyuru's FCA claims. Defendants attached evidentiary exhibits to their Consolidated Memorandum of Law in support of their motion, which they asked the district court to consider in resolving the jurisdictional question.

In support of their motion to dismiss for lack of subject matter jurisdiction, Defendants contended that the allegations in the Third Amended Complaint were based upon and derived from publicly disclosed information, and that Relator Vuyyuru could not establish that he was entitled to the "original source" exception to § 3730(e)(4)(A)'s public disclosure jurisdictional bar. Defendants contended that the allegations in the Third Amended Complaint were

derived from numerous articles appearing in the Virginia Times newspaper prior to Relator Vuyyuru's initial filing of this action. Relator was the publisher of the Virginia Times. Defendants attached the articles as exhibits to their Consolidated Memorandum of Law in support of their Rule 12(b)(1) motion.

The Third Amended Complaint sets forth a basis for Relator Vuyyuru's knowledge separate from the public disclosure. Vuyyuru alleges that he learned that Dr. Jadhav had performed unnecessary biopsies by reviewing Dr. Jadhav's medical records and from medical staff who had observed Dr. Jadhav's practices. Relator Vuyyuru further alleges that he discovered that Dr. Jadhav failed to complete colonoscopy procedures (despite billing for complete procedures) through his review of Dr. Jadhav's charts and through his own subsequent examinations of a number of Dr. Jadhav's patients. Relator Vuyyuru specifically alleges that during these examinations, he discovered lesions, polyps, and cancer which would have been detected had Dr. Jadhav in fact performed complete colonoscopy procedures.

Relator Vuyyuru also presented the district court with declarations that include evidence regarding the manner in which Relator Vuyyuru obtained knowledge of the fraudulent acts alleged in the Third Amended Complaint. In a declaration filed in support of his original complaint, Relator Vuyyuru testifies that his knowledge of the complaint's allegations was based upon personal observation, information provided to him by medical staff, patients, patients' families, and his review of medical records. In his supplemental declaration, Relator Vuyyuru further clarifies the basis of knowledge

of the complaint's allegations separate and apart from the public disclosure of these claims in the media. Specifically, he testifies that from 1997 through 2005, he personally monitored and investigated Dr. Jadhav's work. Relator Vuyyuru makes clear that he personally reviewed Dr. Jadhav's medical charts and specifically observed from this review that Dr. Jadhav had a practice of regularly performing unnecessary biopsies of the IC-valve. Relator Vuyyuru further testifies that in his investigation of Dr. Jadhav's medical charts, he observed that Dr. Jadhav never performed a biopsy of the IC-valve when he was able to bill for removing a polyp or other legitimate pathology, a practice which Relator Vuyyuru contends constitutes evidence that the biopsies of the IC-valve were done solely to increase billing. Relator Vuyyuru further testifies that he interviewed pathologists at both JRMC and SRMC, who confirmed Dr. Jadhav's practices regarding IC-valve biopsies. Vuyyuru also states in his supplemental declaration that he learned about Dr. Jadhav's allegedly fraudulent billing from his personal interviews of the individuals who performed billing services for Dr. Jadhav as well as through the subsequent colonoscopy procedures Relator Vuyyuru performed on several of Dr. Jadhav's patients during which he found polyps and tumors that Dr. Jadhav would have observed had complete colonoscopy procedures been performed on these patients.

The transcript of the January 26, 2007 hearing reveals that Relator Vuyyuru's counsel stated that Vuyyuru was suspended from SRMC in March 2004, not 2003 as the Defendants asserted. Vuyyuru's supplemental declaration states that he was on the medical staff at SRMC until 2004. (J.A. 428).

In his declaration of October 24, 2006, Relator Vuyyuru asserts that he reported these allegations of fraud to the FBI (J.A. 364) ("[i]n and around 2002, 2003, and 2004, I spoke with FBI Agents Vanosten and Irons regarding the improper medical procedures and Medicaid and Medicare Fraud by Dr. Jadhav, SRMC and JRMC"); the Attorney General's Office (J.A. 364) ("in and around 2002 and 2003, I spoke with the Attorney General's Office with a representative responsible for investigating Medicaid Fraud regarding the improper medical procedures by Dr. Jadhav and billing fraud at both SRMC and JRMC"); and the Center for Quality Health Care (J.A. 364) ("in 2003, I filed a complaint with the Board of Medicine against Dr. Jadhav regarding unnecessary procedures, but was directed to Center for Quality Health Care").

In a declaration by Relator Vuyyuru filed after the district court's ruling on the motion to dismiss but prior to the ruling on Defendants' request for attorney fees, Vuyyuru provides more detail regarding his contact with the government regarding these allegations. Relator Vuyyuru states in this declaration that he began his discussions with the United States Attorney in October 1998 and met with several FBI agents from 1998 to 2005. He further asserts that in 2003, he was given a letter providing him certain "protections" related to his cooperation with the government. (J.A. 662).

The District Court held an oral argument hearing on January 26, 2007 regarding Defendants' Motion to Dismiss and on March 28, 2007 granted the Defendants' Rule 12(b)(1) motion to dismiss finding that Relator Vuyyuru's claims were based upon the public disclosures

in the Virginia Times and that Vuyyuru had failed to show he was an original source. Relator Vuyyuru timely appealed the District Court's dismissal, for lack of subject matter jurisdiction, of his Third Amended Complaint to the Fourth Circuit. He also appealed the district court's award of attorneys' fees and costs to one of the defendants. The Fourth Circuit on February 12, 2009 affirmed both District Court decisions, the appeals of which had been consolidated. A detailed dissenting opinion was filed by Judge Reidinger. A timely Petition for Rehearing En Banc was filed by Vuyyuru which was denied on April 10, 2009. This Petition for Certiorari was thereafter timely filed.

ARGUMENT ON REASONS FOR GRANTING THE PETITION

A) THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT MISCONSTRUES THE TEST ESTABLISHED BY THIS COURT FOR DETERMINING WHEN A RELATOR'S CLAIMS BROUGHT UNDER THE FEDERAL FALSE CLAIMS ACT, 31 U.S.C. § 3730, ARE "BASED UPON" A PUBLIC DISCLOSURE UNDER THE ACT'S JURISDICTION-REMOVING PROVISION AT § 3730(e)(4), AND IN HOLDING THAT THE RELATOR MUST PROVE THAT HE WAS THE SOURCE OF THE PUBLIC DISCLOSURE CONFLICTS WITH THIS COURT'S DECISIONS IN *ROCKWELL INT'L CORP. v. UNITED STATES*, 549 U.S. 457 (2007).

The Fourth Circuit majority held (Opinion at 350-51) that Vuyyuru had not overcome the Defendants' evidence of similarity between the publicly disclosed allegations in the Virginia Times and his FCA false claims allegations in the TAC because a relator, in this case Lokesh Vuyyuru, in order to do so had to produce evidence to show that the relator was, in fact, the source of the newspaper articles in question. This holding is contrary to the Supreme court's decision in *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 470-72 127 S.Ct. 1397, 167 L.Ed.2d 190 (2007). Under *Rockwell*, whether Relator Vuyyuru was the source of the newspaper articles is not relevant. *See Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 470-72 127 S.Ct.

1397, 167 L.Ed.2d 190 (2007). What matters is whether the relator has produced evidence to show that his allegations were not "actually derived from" this public disclosure. Imposing this requirement that the relator actually be the source of the public disclosure is at odds with the Supreme Court's holding in *Rockwell* that the FCA statutory phrase "information on which the allegations are based" (see 31 U.S.C. § 3730(e)(4)(B)) refers to information on which the relator's allegations are based, not information on which publicly disclosed allegations are based. *See Rockwell*, 549 U.S. at 470-72. *See* Dissenting Opinion below, *United States of America ex rel. Lokesh Vuyyuru v. Gopinath Jadhav, M.D.*, 555 F.3d 337, 359 (4th Cir. 2009) (Reidinger, District Judge, Dissenting).

The Supreme Court should grant certiorari here because this Fourth Circuit rule, set out in the *Vuyyuru* decision below — that in order to bring a *Qui Tam* action under the federal False Claims Act to recover federal funds taken by a corporation or private individual under false pretenses, the relator on behalf of the United States, or the United States suing directly, must show that the relator was the source of the public disclosure — will prevent the filing and prosecution of legitimate non-parasitic *Qui Tam* actions and as a result cause significant harm to the public interest by preventing recovery of millions, and likely billions, of dollars of federal funds taken under false pretenses.

B) THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, IN EFFECTIVELY HOLDING THAT A RELATOR'S FALSE CLAIMS ALLEGATIONS, TO BE "BASED UPON" A PUBLIC DISCLOSURE UNDER THE FEDERAL FALSE CLAIMS ACT'S JURISDICTION-REMOVING PROVISION AT § 3730(e)(4), NEED NOT BE ACTUALLY DERIVED FROM THE PUBLIC DISCLOSURE BUT ONLY BE SIMILAR TO THAT PUBLIC DISCLOSURE, DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, AND DECIDED THIS QUESTION IN A MANNER THAT CONFLICTS WITH DECISIONS OF OTHER CIRCUIT COURTS.

The Fourth Circuit, until this decision in Vuyyuru below, had adopted the rule that "a relator's action is 'based upon' a public disclosure of allegations only where the relator has actually derived from that disclosure the allegations upon which his qui tam action is based." *United States ex rel. Siller v. Becton Dickinson & Co.*, 21 F.3d 1339, 1348 (4th Cir. 1994). The majority in the *Vuyyuru* decision below departed from this rule when it concluded that "the district court logically reasoned that '[t]he remarkable similarities between the news article and the allegations contained in [paragraphs 20 and 27 of the Third Amended Complaint] are significant proof that the latter are 'actually derived' from the former.' " Vuyyuru Opinion at 350 (quoting J.A. 558). *See United States of America ex rel. Lokesh Vuyyuru v. Gopinath Jadhav, M.D.*, 555 F.3d 337, 359 (4th Cir. 2009) (Reidinger, District Judge, Dissenting).

However, as the Dissent in *Vuyyuru* below explains, there is no logic to the assertion that mere similarity between allegations in a news article and allegations in an FCA complaint means that the plaintiff obtained the information on which the complaint is based from the news article. Other logical possibilities are that the author of the news article obtained information from the plaintiff; that the author of the news article and the plaintiff obtained their information from common sources independently; or that the author of the news article and the plaintiff had separate reliable sources of the information.

The Circuits are split on how this issue should be addressed as the Dissent explained in Vuyyuru below:

> finding allegations to be "based upon" a public disclosure requires more than a finding of similarity between the public disclosure and the complaint's allegations. "[I]t is self-evident that a suit that includes allegations that happen to be similar (even identical) to those already publicly disclosed, but were not actually derived from those public disclosures, simply is not, in any sense, parasitic." *Id.* As the Siller Court noted, this Court's interpretation of the "based upon" requirement differs from other circuits. Id. ("We are aware . . . that other circuits have not embraced this interpretation of the phrase, assuming instead that an action is based upon a public disclosure of allegations if its allegations are identical or similar to those already publicly disclosed."). While

> other circuits may disagree with this approach, Siller remains the law in this circuit. Accordingly, I would hold that the district court committed clear error in finding that the similarities between Relator Vuyyuru's allegations and the newspaper articles constituted proof that the allegations were "based upon" a prior public disclosure.

United States of America ex rel. Lokesh Vuyyuru v. Gopinath Jadhav, M.D., 555 F.3d 337, 359 (4th Cir. 2009) (Reidinger, District Judge, Dissenting). *And see, United States v. Board of Trustees of the Leland Stanford, Jr. Univ.*, 161 F.3d 533 (9th Cir. 1998), *cert. den.* 526 U.S. 1066 (1999) (If, at time relator files qui tam complaint, allegations or transactions of complaint have been publicly disclosed, then allegations are "based upon" publicly disclosed information). *Also see, United States ex rel. McKenzie v. Bellsouth Telcoms.*, 123 F.3d 935 (6th Cir. 1997) (criticizing the 4th Cir. Decision in *Siller*); *United States ex rel. Mistick PBT v Housing Auth.*, 186 F.3d 376 (3rd Cir. 1999) (same); *Minn. Ass'n of Nurse Anesthetists v. Allina Health System Corp.*, 276 F.3d 1032 (8th Cir. 2002) (same); *United States ex rel. Paranich v. Sorgnard*, 396 F.3d 326 (3rd Cir. 2005) (same). *But see, United States ex rel. Woodard v. Country View Care Center, Inc.*, 797 F.2d 888 (10th Cir. 1986) (criticized in *United States ex rel. Long v. SCS Bus. & Tech. Inst., Inc.*, 173 F.3d 870 (D.C. Cir. 1999); *United States ex rel. Rost v. Pfizer, Inc.*, (2006, DC Mass) 446 F Supp.2d. 6 (D.C. Mass. 2006) (District Court adopted "minority rule" and held that a FCA complaint is "based upon" public disclosure only when allegations supporting action are "derived from" public disclosure; that this

interpretation is supported by plain language of statute and ordinary meaning of phrase and better serves polices of FCA).

In Vuyyuru, it should have been clear to both the District Court and the Fourth Circuit from a review of the face of the TAC and the news articles that relator Vuyyuru alleged numerous material details about the Defendants' alleged false claims that were not provided in the news articles. This alone should have been sufficient for both courts to conclude that Vuyyuru's FCA allegations and claims were not based upon the public disclosures in the Virginia Times because they were not "derived from those disclosures."

The Supreme Court should grant certiorari here because this Fourth Circuit rule, set out in the *Vuyyuru* decision below, to the effect that a FCA complaint can be found to be "based upon" a public disclosure" by virtue of mere similarity of the complaint allegations to those in a news article, will prevent the filing and prosecution of legitimate non-parasitic *Qui Tam* actions and as a result cause significant harm to the public interest by preventing recovery of millions, and likely billions, of dollars of federal funds taken under false pretenses.

C) THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT REGARDING WHEN A RELATOR'S FALSE CLAIMS ACTION GENERALLY AND A RELATOR'S JURISDICTIONAL ALLEGATIONS SPECIFICALLY ARE "CLEARLY FRIVOLOUS" UNDER THE FEDERAL FALSE CLAIMS ACT'S PROVISION FOR AN AWARD OF ATTORNEYS' FEES TO A PREVAILING DEFENDANT AT § 3730(d)(4).

The Fourth Circuit decision below affirming the District Court's award of attorney fees to a prevailing defendant, based on a finding that relator Vuyyuru's assertion of federal jurisdiction under the FCA was not just in error and was not even just frivolous but was "clearly frivolous" is so extreme that the Supreme Court should not wait for further development of splits in the decisions on this issue among the Circuits. This Court should act now to make the proper rule of law clear for all the Circuits to avoid a potentially huge chilling effect on potential FCA Qui Tam plaintiffs and a potentially huge reduction in the recovery of federal funds by the United States under the FCA.

It is difficult to imagine, given the detailed allegations by relator Vuyyuru in the TAC and his several declarations in the record that the two courts below could find that he was clearly frivolous in asserting that his claims were not based on news articles that were published long after he had brought his allegations to

the FBI and other agencies, and in asserting that he, as a doctor with access to medical records and personnel in question and who had consulted both in investigating these FCA claims, was an original source of the information on which his claims were based. The Dissenting Opinion below finds not only that Vuyyuru's assertions in these regards were not frivolous, they were actually correct. The Dissenting Opinion is carefully researched and well reasoned and it is hard to conceive of a rationale to sanction a litigant for filing a "clearly frivolous" action when a member of the Court of Appeals panel hearing the case found a sound basis for that litigant actually prevailing on the jurisdiction issue in question.

> Because I believe the District Court's dismissal was in error, I would also vacate the district court's award of attorneys' fees to the Defendants. Moreover, even if the finding of a lack of subject matter jurisdiction were sustained, I would still reverse the award of attorneys' fees. Attorneys' fees may be awarded under § 3730(d)(4) upon a finding "that the claim of the person bringing the action was clearly frivolous. . . ." 31 U.S.C. § 3730(d)(4). For all of the reasons set forth above, I simply do not believe that Relator Vuyyuru's jurisdictional allegations are "clearly" frivolous.
>
> There is no question that the record presented to the district court was convoluted, due in no small part to the voluminous and oftentimes inartfully drafted filings, and it must have appeared at times

> that this action was little more than a grudge match between the Relator and the Defendants. The presentation of the facts may have been awkward, and there may well be some substantive flaws in the Relator's claims. At bottom, however, this is a case about a physician who undertook to investigate the medical procedures and billing practices of another physician and the medical facilities at which he worked and found what may well constitute Medicare and Medicaid fraud. Even if such claims may ultimately prove to be frivolous, such frivolousness falls short of the standard of being "clear" based on this record. I would, therefore, vacate the award of attorneys' fees as having been an abuse of discretion.

United States of America ex rel. Lokesh Vuyyuru v. Gopinath Jadhav, M.D., 555 F.3d 337, 363 (4th Cir. 2009) (Reidinger, District Judge, Dissenting). For the above reasons, to protect the vital public interests the Congress sought to promote in enacting the FCA, this Court should grant this Petition and issue a clear decision correcting this extreme decision by the Fourth Circuit panel below which threatens to prevent the filing of numerous meritorious FCA qui tam actions that could recover millions if not billions of dollars for the federal treasury at a critical time in the nation's economic history.

CONCLUSION

For all the foregoing reasons, Petitioner Vuyyuru respectfully requests that the Supreme Court of the United States grant his Petition for a Writ of Certiorari and clarify the applicable law for the nation's courts on these important federal statutory questions.

Respectfully submitted,

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